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Paper No. 20

OFFICE OF THE DIRECTOR  
TC 3600

Nick (Nicholas Sheppard) Bromer  
402 Stackstown Road  
Marietta, PA 17547-9311

In re Application of  
Bromer  
Application No. 09/995,097  
Filed: November 27, 2001  
Attorney Docket No.: None  
For: DORSIFLEXION SKATE BRAKE

: DECISION ON PETITION  
: TO WITHDRAW  
: FINALITY OF REJECTION  
: 37 CFR 1.181

Applicant's petition under 37 C.F.R. 1.181 filed July 23, 2003 in application Serial No. 09/995,097, requests withdrawal of the Final Rejection, mailed on July 2, 2003, as being premature.

The petition is **DENIED**.

A petition under 37 CFR 1.181 must include: (1) a statement of facts involved and (2) the point or points to be reviewed and the action requested. There is no fee required for a 1.181 petition.

The petition filed on July 23, 2003, included both elements (1) and (2) above. In the petition, the applicant indicated that the decision on the petition mailed on May 27, 2003 did not notify the applicant when the finality (paper no. 8, mailed Sept. 16, 2002) was withdrawn, and therefore the applicant did not have an opportunity to submit any additional amendments in response to such withdrawal. In addition, the amendment that was submitted (and subsequently entered) after the paper no. 8 final rejection, filed Sept. 25, 2002, was not an amendment made without constraint because it was after final rejection and no new issues could be raised.

Contrary to applicant's petition remarks, the petition decision mailed May 27, 2003 as paper no. 17 clearly indicates that "**Accordingly, the finality of the above-noted office action (final rejection of Sept. 16, 2002), but not the action itself, is hereby withdrawn**" (emphasis added). This petition decision is dated and mailed May 27, 2003. In addition, the decision indicated that the application was being forwarded "to the examiner for subsequent action on the merits based upon the amendment (now an amendment after a non-final action) received Sept. 25, 2002". Thus, applicant was properly informed of (1) the withdrawal of the earlier finality (paper no. 8, Sept. 16, 2002), (2) the entry of the amendment (Sept. 25, 2002) and (3) the subsequent action by the examiner on such amendment. At such time, the applicant had sufficient time to contact the examiner and/or submit subsequent amendment(s) in the application prior to the mailing of the final rejection of July 2, 2003. Since the claims were properly rejected in the previous office action (Sept. 16, 2002), the finality of the (most recent) office action, mailed July 2, 2003, is deemed proper.

Any questions concerning his decision should be directed to Supervisory Patent Examiner Brian Johnson at (703) 308-0885.

**SUMMARY:** The petition is **DENIED**.

A handwritten signature in black ink, appearing to be 'G. Dayoan', written over a horizontal line.

Glenn Dayoan, Acting Director,  
Patent Technology Center 3600  
Telephone: (703) 308-1134

BJ/SM: 9/15/03

*SM*